

Consultation Document Proposal for an Initiative on Sustainable Corporate Governance

Fields marked with * are mandatory.

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

Political context

The Commission's political guidelines set the ambition of Europe becoming the world's first climate-neutral continent by 2050 and foresee strong focus on delivering on the UN Sustainable Development Goals[\[1\]](#), which requires changing the way in which we produce and consume. Building on the political guidelines, in its Communication on the European Green Deal[\[2\]](#) (adopted in December 2019) and on A Strong Social Europe for Just Transition[\[3\]](#) (adopted in January 2020) the Commission committed to tackling climate and environmental-related challenges and set the ambition to upgrade Europe's social market economy.

The European Green Deal sets out that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company's development in the longer term (beyond 3-5 years), rather than focusing on short-term gains.

As a follow-up to the European Green Deal, the Commission has announced a sustainable corporate governance initiative for 2021, and the initiative was listed among the deliverables of the Action Plan on a Circular Economy[\[4\]](#), the Biodiversity strategy[\[5\]](#) and the Farm to Fork strategy[\[6\]](#). This initiative would build on the results of the analytical and consultative work carried out under Action 10 of the Commission's 2018 Action Plan on Financing Sustainable Growth and would also be part of the Renewed Sustainable Finance

Strategy.

The recent Communication “Europe’s moment: Repair and Prepare for the Next Generation” (Recovery Plan)[\[7\]](#) (adopted in May 2020) also confirms the Commission’s intention to put forward such an initiative with the objective to “ensure environmental and social interests are fully embedded into business strategies”. This stands in the context of competitive sustainability contributing to the COVID-19 recovery and to the long-term development of companies. Relevant objectives are strengthening corporate resilience, improving predictability and management of risks, dependencies and disruptions including in the supply chains, with the ultimate aim for the EU economy to build back stronger.

This initiative is listed in the Commission Work program for 2021 [\[8\]](#).

EU action in the area of sustainable corporate governance will complement the objectives of the upcoming Action Plan for the implementation of the European Pillar of Social Rights, to ensure that the transitions towards climate-neutrality and digitalisation are socially sustainable. It will also strengthen the EU’s voice at the global scene and would contribute to the respect of human rights, including labour rights – and corporate social responsibility criteria throughout the value chains of European companies – an objective identified in the joint Communication of the Commission and the High Representative on the Global EU response to COVID-19[\[9\]](#).

This initiative is complementary to the review of the Non-Financial Reporting Directive (NFRD, Directive 2014/95/EU[\[10\]](#)) which currently requires large public-interest companies to disclose to the public certain information on how they are affected by non-financial issues, as well as on the company’s own impacts on society and the environment. The NFRD also requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). Whilst the NFRD is based on incentives “to report”, the sustainable corporate governance initiative aims to introduce duties “to do”. Such concrete actions would therefore contribute to avoiding “greenwashing” and reaching the objectives of the on-going review of the NFRD too, in particular the aim of enhancing the reliability of information disclosed under the NFRD by ensuring that the reporting obligation is underpinned by adequate corporate and director duties, and the aim of mitigating systemic risks in the financial sector. Reporting to the public on the application of sustainability in corporate governance and on the fulfilment of directors’ and corporate duties would enable stakeholders to monitor compliance with these duties, thereby helping ensure that companies are accountable for how they mitigate their adverse environmental and social impacts.

The initiative would build upon relevant international standards on business and human rights and responsible business conduct, such as the United Nations’ Guiding Principles on Businesses and Human Rights and the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.

As regards environmental harm linked to deforestation, the Commission is also conducting a fitness check of the EU Timber Regulation and an impact assessment.

Finally, Covid-19 has put small and medium sized companies under financial pressure, partly due to increased delay in the payments from their larger clients. This raises the importance of the role of board members of companies to duly take into account the interests of employees, including those in the supply chains as well as the interests of persons and suppliers affected by their operations. Further support

measures for SMEs also require careful consideration.

Results of two studies conducted for the Commission

To integrate properly sustainability within corporate strategies and decisions, the High-Level Expert Group on Sustainable Finance[11] recommended in 2018 that the EU clarifies corporate board members' duties so that stakeholder interests are properly considered. Furthermore, they recommended for the EU to require that directors adopt a sustainability strategy with proper targets, have sufficient expertise in sustainability, and to improve regulation on remuneration.

In its 2018 Action Plan on Financing Sustainable Growth[12] the Commission announced that it would carry out analytical and consultative work on the possible need to legislate in this area.

The Commission has been looking at further obstacles that hinder the transition to an environmentally and socially sustainable economy, and at the possible root causes thereof in corporate governance regulation and practices. As part of this work, two studies have been conducted which show market failures and favour acting at the EU level.

The *study on directors' duties and sustainable corporate governance* [13] evidences that there is a trend in the last 30 years for listed companies within the EU to focus on short-term benefits of shareholders rather than on the long-term interests of the company. Data indicate an upward trend in shareholder pay-outs, which increased from 20% to 60% of net income while the ratio of investment (capital expenditure) and R&D spending to net income has declined by 45% and 38% respectively. The study argues that sustainability is too often overlooked by short-term financial motives and that to some extent, corporate short-termism finds its root causes in regulatory frameworks and market practices. Against these findings, the study argues that EU policy intervention is required to lengthen the time horizon in corporate decision-making and promote a corporate governance more conducive to sustainability. To achieve this, it spells out three specific objectives of any future EU intervention: strengthening the role of directors in pursuing their company's long-term interest by dispelling current misconceptions in relation to their duties, which lead them to prioritise short-term financial performance over the long-term interest of the company; improving directors' accountability towards integrating sustainability into corporate strategy and decision-making; and promoting corporate governance practices that contribute to company sustainability, by addressing relevant unfavourable practices (e.g. in the area of board remuneration, board composition, stakeholder involvement).

The *study on due diligence requirements through the supply chain*[14] focuses on due diligence processes to address adverse sustainability impacts, such as climate change, environmental, human rights (including labour rights) harm in companies' own operations and in their value chain, by identifying and preventing relevant risks and mitigating negative impacts. The study shows that in a large sample of mostly big companies participating in the study survey, only one in three businesses claim to undertake due diligence which takes into account all human rights and environmental impacts. Therefore voluntary initiatives, even when backed by transparency do not sufficiently incentivise good practice. The study shows wide stakeholder support, including from frontrunner businesses, for mandatory EU due diligence. 70% of businesses responding to the survey conducted for the study agreed that EU regulation might provide benefits for business, including legal certainty, level playing field and protection in case of litigation. The study shows that a number of EU Member States have adopted legislation or are considering action in this field. A potential patchwork of national legislation may jeopardise the single market and increase costs for

businesses. A cross-sectoral regulatory measure, at EU level, was preferred to sector specific frameworks.

Objectives of this public consultation

This public consultation aims to collect the views of stakeholders with regard to a possible Sustainable Corporate Governance Initiative. It builds on data collected in particular in the two studies mentioned above and on their conclusions, as well as on the feedback received in the public consultation on the Renewed Sustainable Finance Strategy[15]. It includes questions to allow the widest possible range of stakeholders to provide their views on relevant aspects of sustainable corporate governance.

About you

* Language of my contribution

- Bulgarian
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- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* Surname

Stokland

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Frida

* Email (this won't be published)

frida.stokland@deutsche-boerse.com

* Organisation name

255 character(s) maximum

Deutsche Börse Group (DBG)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Albania
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- American Samoa
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- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
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- Marshall Islands
- Martinique
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- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South

	French Southern and Antarctic Lands		Sandwich Islands
● Barbados	● Gabon	● Monaco	● South Korea
● Belarus	● Georgia	● Mongolia	● South Sudan
● Belgium	● Germany	● Montenegro	● Spain
● Belize	● Ghana	● Montserrat	● Sri Lanka
● Benin	● Gibraltar	● Morocco	● Sudan
● Bermuda	● Greece	● Mozambique	● Suriname
● Bhutan	● Greenland	● Myanmar /Burma	● Svalbard and Jan Mayen
● Bolivia	● Grenada	● Namibia	● Sweden
● Bonaire Saint Eustatius and Saba	● Guadeloupe	● Nauru	● Switzerland
● Bosnia and Herzegovina	● Guam	● Nepal	● Syria
● Botswana	● Guatemala	● Netherlands	● Taiwan
● Bouvet Island	● Guernsey	● New Caledonia	● Tajikistan
● Brazil	● Guinea	● New Zealand	● Tanzania
● British Indian Ocean Territory	● Guinea-Bissau	● Nicaragua	● Thailand
● British Virgin Islands	● Guyana	● Niger	● The Gambia
● Brunei	● Haiti	● Nigeria	● Timor-Leste
● Bulgaria	● Heard Island and McDonald Islands	● Niue	● Togo
● Burkina Faso	● Honduras	● Norfolk Island	● Tokelau
● Burundi	● Hong Kong	● Northern Mariana Islands	● Tonga
● Cambodia	● Hungary	● North Korea	● Trinidad and Tobago
● Cameroon	● Iceland	● North Macedonia	● Tunisia
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| Canada | India | Norway | Turkey |
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Islands | • Japan | • Philippines | • United States
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* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your contribution, country of origin and the respondent type profile that you selected will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

If you replied that you answer on behalf of a business, please specify the type of business:

- institutional investor, asset manager
- other financial sector player (e.g. an analyst, rating agency, data and research provider)
- auditor
- other

If other, please specify:

Financial Market Infrastructure provider

Consultation questions

If you are responding on behalf of a large company, please indicate how large is the company:

- Large company with 1000 or more people employed
- Large company with less than 1000 but at least 250 people employed

If you are responding on behalf of a company, is your company listed on the stock-exchange?

- Yes, in the EU
- Yes, outside the EU
- Yes, both in and outside the EU
- No

If you are responding on behalf of a company, does your company have experience in implementing due diligence systems?

- Yes, as legal obligation
- Yes, as voluntary measure
- No

If resident or established/registered in an EU Member State, do you carry out (part of) your activity in several EU Member States?

- Yes
- No

If resident or established/ registered in a third country (i.e. in a country that is not a member of the European Union), please specify your country:

If resident or established registered in a third country, do you carry out (part of) your activity in the EU?

- Yes
- No

If resident or established registered in a third country, are you part of the supply chain of an EU company?

- Yes
- No

Section I: Need and objectives for EU intervention on sustainable corporate governance

Questions 1 and 2 below which seek views on the need and objectives for EU action have already largely been included in the public consultation on the Renewed Sustainable Finance Strategy earlier in 2020. The

Commission is currently analysing those replies. In order to reach the broadest range of stakeholders possible, those questions are now again included in the present consultation also taking into account the two studies on due diligence requirements through the supply chain as well as directors' duties and sustainable corporate governance.

Question 1: Due regard for stakeholder interests', such as the interests of employees, customers, etc., is expected of companies. In recent years, interests have expanded to include issues such as human rights violations, environmental pollution and climate change. Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

- Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance.
- Yes, as these issues are relevant to the financial performance of the company in the long term.
- No, companies and their directors should not take account of these sorts of interests.
- Do not know.

Please provide reasons for your answer:

Deutsche Börse Group (DBG) welcomes the opportunity to provide a response to the European Commission's consultation on sustainable corporate governance. We fully support the fundamental principles of the European Green Deal, the Sustainable Finance agenda and the global transfer of assets to a more sustainable economy.

As a general comment, we find it unfortunate that the consultation in some instances is not framed in a way which allows full expression of the different views of all stakeholders affected by the issue at hand. The consultation is to a great extent based on the conclusions and assumptions made by the studies commissioned beforehand, which have been criticized by many stakeholders on for instance, their reliability, lack of empirical evidence and biased survey of literature. This is unfortunate as ideas explored can be far-reaching and deserve the full range of opinions being reflected.

A wide range of interests are important to each company, to a different extent depending on for instance the type, size and organisation of its business. We are convinced that all the interests listed above, and possibly more, are in fact already relevant for the financial interests of shareholders of a company. They need to be taken into account within – not merely alongside - the financial interests of shareholders. Many corporate governance codes already include principles regarding for instance employee rights, human rights, diversity, and environmental aspects. Therefore, we believe further developments of such principles should be made within the framework of corporate governance codes.

Question 2: Human rights, social and environmental due diligence requires companies to put in place continuous processes to identify risks and adverse impacts on human rights, health and safety and environment and prevent, mitigate

and account for such risks and impacts in their operations and through their value chain.

In the survey conducted in the context of the study on due diligence requirements through the supply chain, a broad range of respondents expressed their preference for a policy change, with an overall preference for establishing a mandatory duty at EU level.

Do you think that an EU legal framework for supply chain due diligence to address adverse impacts on human rights and environmental issues should be developed?

- Yes, an EU legal framework is needed.
- No, it should be enough to focus on asking companies to follow existing guidelines and standards.
- No action is necessary.
- Do not know.

Please explain:

ESG risks vary between individual companies and across industries. Differences may arise with respect to products, processes, organisational structure, business relationships and geographical location. One size does not fit all, and an EU legal framework therefore does not seem to be the most efficient way ahead.

Many companies are already engaged in processes and risk management related to supply chains and are following principles and guidance developed for this purpose. We therefore believe it should be sufficient to ask companies to follow existing guidelines and standards. In addition, there would be benefits in continuing to build on the OECD guidelines (OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct), the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Harmonisation at a global level would be especially helpful for companies with international supply chains, as would developing sectoral guidance. We would support developing a common understanding at EU level, building on the OECD, UN and ILO work, which could take the form of soft-law measures such as non-binding guidelines or possibly a comply or explain framework. In doing so, it would seem most efficient to focus on how to put the appropriate processes in place.

However, if legislative measures were to be proposed, we would like to emphasise that the intended due diligence liability and duty of care must be binding for all similar companies regardless of whether they are listed or not. Such policies would otherwise disincentivise potential issuers from going public, which would be to the detriment of capital markets and the further development of the EU single market. In addition, the scope of potential due diligence obligations in the supply chain should be clearly differentiated. Companies should be prevented from incurring high administrative costs by monitoring their supply chains down to the last link in the chain regarding due diligence obligations. This could further lead to a competitive disadvantage, as non-EU countries that do not have a binding legal framework do not have to comply with these obligations. Accordingly, we consider a further development of existing frameworks on a global level to be more expedient.

Finally, we believe the issue of liability needs to be addressed. We would caution against measures that could potentially lead to a disproportionate liability against third parties.

Question 3: If you think that an EU legal framework should be developed, please indicate which among the following possible benefits of an EU due diligence duty is important for you (tick the box/multiple choice)?

- Ensuring that the company is aware of its adverse human rights, social and environmental impacts and risks related to human rights violations other social issues and the environment and that it is in a better position to mitigate these risks and impacts
- Contribute effectively to a more sustainable development, including in non-EU countries
- Levelling the playing field, avoiding that some companies freeride on the efforts of others
- Increasing legal certainty about how companies should tackle their impacts, including in their value chain
- A non-negotiable standard would help companies increase their leverage in the value chain
- Harmonisation to avoid fragmentation in the EU, as emerging national laws are different
- SMEs would have better chances to be part of EU supply chains
- Other

Question 3a. Drawbacks

Please indicate which among the following possible risks/drawbacks linked to the introduction of an EU due diligence duty are more important for you (tick the box /multiple choice)?

- Increased administrative costs and procedural burden
- Penalisation of smaller companies with fewer resources
- Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- Responsibility for damages that the EU company cannot control
- Decreased attention to core corporate activities which might lead to increased turnover of employees and negative stock performance
- Difficulty for buyers to find suitable suppliers which may cause lock-in effects (e.g. exclusivity period/no shop clause) and have also negative impact on business performance of suppliers
- Disengagement from risky markets, which might be detrimental for local economies

Other

Other, please specify:

We fully support the fundamental principles of the European Green Deal, the Sustainable Finance agenda and the global transfer of assets to a more sustainable economy.

Since companies are different and cannot be managed the same way, we support maintaining principles for corporate governance in the existing format of codes. This way, companies are provided with useful guidance on governance, while allowing shareholders to decide on the best ways forward. Many corporate governance codes already include principles on for instance employee rights, human rights, diversity, and environmental aspects. We believe further developments of such principles should be made within the framework of corporate governance codes.

It is important that any EU due diligence duty is proportional and does not increase administrative costs and procedural burdens, notably for SMEs. As mentioned under Q2, undue legal liability risks can be expected, which is why any EU legislative action should set out necessary limitations for legal actions against companies.

Section II: Directors' duty of care – stakeholders' interests

In all Member States the current legal framework provides that a company director is required to act in the interest of the company (duty of care). However, in most Member States the law does not clearly define what this means. Lack of clarity arguably contributes to short-termism and to a narrow interpretation of the duty of care as requiring a focus predominantly on shareholders' financial interests. It may also lead to a disregard of stakeholders' interests, despite the fact that those stakeholders may also contribute to the long-term success, resilience and viability of the company.

Question 5. Which of the following interests do you see as relevant for the long-term success and resilience of the company?

	Relevant	Not relevant	I do not know/I do not take position
the interests of shareholders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of employees	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of employees in the company's supply chain	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
the interests of customers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of persons and communities affected by the operations of the company	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
the interests of persons and communities affected by the company's supply chain	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
the interests of local and global natural environment, including climate	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

the likely consequences of any decision in the long term (beyond 3-5 years)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the interests of society, please specify	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
other interests, please specify	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

the interests of society, please specify:

As a financial market infrastructure provider, the interests of society are important to our company. Only with society's acceptance can markets function and our company achieve long-term success. We believe trust is essential for functioning markets and sustainable economies.

other interests, please specify:

First, we would like to question making references to "short-termism" without actually having a common understanding what defines "short-termism" in the first place. Second, we disagree with the statement in the question that a director's duty of care is insufficiently defined. This is a long-standing basic principle of company law and in many countries, a director's duties are elaborated upon in recommendations in corporate governance codes.

Alongside the interests of shareholders, we also believe other financers of a company are relevant, for instance banks who provide loans, or investors in corporate bonds.

We completely agree that various stakeholders' interests contribute to the long-term success, resilience and viability of a company. Companies also do take such interests into account since they are an integral part of the financial interests of the company and of the shareholders. We reiterate that we believe this is why many corporate governance codes include principles on how to take various interests into account.

We see risks with introducing detailed requirements related to certain interests, given that there are a multitude of interests which could inadvertently be excluded. Attempting to encompass and regulate all these interests in detailed ways would in our view be counterproductive. It is therefore preferable to apply principles which can be applied in the best way for each company's specific situation. The interests listed above (and additional ones) are important to many existing or potential shareholders. We encourage further work aiming at ensuring that shareholders can engage and use their rights to the full extent, including by digital solutions.

Finally, it must also be taken into account that the above-mentioned stakeholder interests can lead to reputational damage if not taken into account. Reputational risks are already integrated into many risk management systems today and play an important role when defining the corporate strategy, considering the long-term success perspective and resilience.

Question 6. Do you consider that corporate directors should be required by law to (1) identify the company's stakeholders and their interests, (2) to manage the risks for the company in relation to stakeholders and their interests, including on the long run (3) and to identify the opportunities arising from promoting stakeholders' interests?

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	I strongly agree	I agree to some extent	I disagree to some extent	I strongly disagree	I do not know	I do not take position
Identification of the company's stakeholders and their interests	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Management of the risks for the company in relation to stakeholders and their interests, including on the long run	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identification of the opportunities arising from promoting stakeholders' interests	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

Identifying stakeholders, functioning and comprehensive risk management are a precondition for the successful management of a company and therefore in the own best interest of the corporate directors in charge, so in general no regulatory action would be required to set an incentive here. These kinds of considerations are already included in many corporate governance codes, which we believe is the right way forward. Legislative measures moving the above-mentioned duties specifically to directors, would be an inappropriate transfer of responsibility from society, to individuals who are not elected by society to carry out such duties. It should also be noted that the principle of proportionality applies when managing risks. While all stakeholders and their interests should be included when identifying risks, it does not necessarily make sense to manage the risks of all stakeholders equally. Focusing on the company risks emanating from the relevant stakeholders is more effective and contributes to success in the long term. Secondly, some of the issues mentioned are already tackled by the non-financial reporting directive and hence overlapping obligations should be avoided. Third, many of the issues mentioned above are also already addressed by national corporate governance codes, which is the right place to do so. Last, it is important to note that there are various ways to identify stakeholders, and that stakeholders can differ from one company to the other. A one size fits all approach is thus not expedient. Therefore, since companies are different and cannot be managed the same way, we support maintaining principles for corporate governance in the existing format of codes. This way, companies are provided with useful guidance on governance, while allowing for shareholders to decide on the best ways forward for the company in question. Many corporate governance codes already include principles on for instance employee rights, human rights, diversity, and environmental aspects. We believe further developments of such principles should be made within the framework of corporate governance codes.

The Non-Financial Reporting Directive (NFRD) already requires companies in scope to identify the principal risks related to their business and how these are managed. DBG believes that the scope of the NFRD should not be limited to public-interest entities and it should be extended to all non-listed companies with more than 500 employees. Whether a company is listed or not is not a relevant factor for whether its sustainability risks and impacts are high or low.

Question 7. Do you believe that corporate directors should be required by law to set up adequate procedures and where relevant, measurable (science –based)

targets to ensure that possible risks and adverse impacts on stakeholders, ie. human rights, social, health and environmental impacts are identified, prevented and addressed?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please explain:

While we agree the mentioned impacts are relevant to be taken into account in a company's risk strategies, we do not agree that directors should be required by law to set up adequate procedures and targets to ensure that ESG risks and adverse impacts on stakeholders are identified, prevented and addressed. On the one hand, a legal obligation would lead to an unjustified burden on companies if the principle of proportionality is not guaranteed. On the other hand, principles and frameworks already exist that support corporate directors in addressing ESG risks with their stakeholders (Stakeholder Materiality Analysis Tool, OECD principles on Due Diligence Guidance).

In general, we would like to highlight the principles already developed by OECD on Due Diligence Guidance for Responsible Business Conduct. Such guidance is helpful and should remain the way forward. We encourage the EU to cooperate with the OECD to facilitate international harmonisation in this regard. Further, we are strongly convinced of the benefits of disclosure. For further development of disclosures, we believe the Non-financial Reporting Directive is the best tool.

Question 8. Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the short-term financial interests of shareholders, and that this should be clarified in legislation as part of directors' duty of care?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please provide an explanation or comment:

We believe the phrasing of the question is biased in the way that it suggests that the balancing of the interests of all stakeholders would be the preferred. It does not differentiate but presents two (seemingly

opposing) alternative situations to decide upon. However, the situations outlined are too simplistic. There can for instance be situations where short-term decisions need to be taken in order to preserve the long-term value creation for the sake of stakeholders. We would also like to question making references to "short-termism" without actually having a common understanding what defines "short-termism" in the first place.

We strongly agree that it is a natural part of directors' duties to balance the interests of all stakeholders, as this is relevant for the short - as well as longer term interests of shareholders. The transparency framework which is a well-developed and natural part of being listed on a stock exchange, inherently contributes to long-termism, or else companies could not attract investors on the public markets.

In general stakeholder interests should be taken into account when enterprises take strategical and entrepreneurial decisions. That would enable the companies to meet the responsibility of society and to foster a transformation of society to a green and sustainable living. New product and service offerings may arise and lead to new revenue sources. Risks in the supply chain may have a more severe impact and may be mitigated. The Shareholders interest would be met by sustainable growth rates, and predictable dividend payments.

Guidance on this should remain in recommendations related to corporate governance. As it is already the role of corporate directors to balance the interests of all stakeholders, we strongly disagree that the duty of care needs further clarification in legislation.

Question 9. Which risks do you see, if any, should the directors' duty of care be spelled out in law as described in question 8?

The proposed duty of care would give rise to interpretative uncertainty for directors and related stakeholders.

Although we in principle agree with the intention of increasing societal responsibility of corporations, there is also a risk in transferring responsibilities from the society to individuals who are not publicly elected. Stakeholders having the impression of being at a disadvantage could file a suit against the company which would increase legal risks. Potential risks also include increase of costs and procedures, bureaucracy and inability in decision-making.

Balancing many interests is a natural part of directors' duties and there are principles related to this included in many corporate governance codes already, which we believe is the best solution. However, meeting every stakeholder's interest might not always be possible, provable and may lead to a competitive drawback as markets outside EU-law would be less regulated.

How could these possible risks be mitigated? Please explain.

We believe further developments should be made within principles-based recommendations in corporate governance codes, in the form of soft law instruments. An effective monitoring of the application of these instruments should be implemented. It is essential to prevent and address within the duty of care only those risks and impacts which are supported by measurable evidence and could be reasonably justified in relation to the long run interests of the company.

Where directors widely integrate stakeholder interest into their decisions already today, did this gather support from shareholders as well? Please explain.

A balance of stakeholder interests is already a requirement for sustainable investments (part of ESG ratings). These requirements are part of an international sustainability policy.

The market share for sustainable financial products is steadily rising as shareholders consider ESG criteria (including the integration of stakeholder interests) to be very important. The integration of stakeholder interests is also discussed on Annual General Meetings.

In this context we can share various observations regarding its development over the last few years. For instance, it is our clear sense that broader topics such as human rights and environmental aspects are increasingly a natural part of company considerations. We note significant interest and uptake in the range of products and services developed and offered to various types of stakeholders within the financial ecosystem. In addition, institutional investors such as pension funds are changing their investment strategies and are including more and more sustainable investments.

These examples demonstrate that investors as well as companies - the whole company and not only directors - are taking issues such as environment and human rights into account. Investor interest is already a strong incentive which has had a huge impact on companies and sustainable corporate governance.

Question 10. As companies often do not have a strategic orientation on sustainability risks, impacts and opportunities, as referred to in question 6 and 7, do you believe that such considerations should be integrated into the company's strategy, decisions and oversight within the company?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please explain:

We strongly disagree with the statement that companies often do not have a strategic orientation on sustainability risks, impacts and opportunities. It is not accompanied by concrete, unbiased evidence, which is unfortunate and does not adhere to the better regulation principles of the European Commission. On the contrary, as elaborated under Q9, we see significant evidence that sustainability is at the core of companies' strategies. It is already integrated in most companies' strategy, decisions and internal oversight. In addition, we would like to highlight that the financial sector already has in place sectorial oversight and rules within existing legislation and that any possible additional action taken by the EU should avoid overlapping and excessive burden.

As regards the concepts of sustainability risk, recent ECB and EBA publications* confirm that ESG risks are seen as drivers of traditional risks. Based on this, the business model and individual exposure to ESG risks should be taken into account when integrating these considerations into the company strategy.

*<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202011finalguideonclimate-relatedandenvironmentalrisks~58213f6564.en.pdf>

Enforcement of directors' duty of care

Today, enforcement of directors' duty of care is largely limited to possible intervention by the board of directors, the supervisory board (where such a separate board exists) and the general meeting of shareholders. This has arguably contributed to a narrow understanding of the duty of care according to which directors are required to act predominantly in the short-term financial interests of shareholders. In addition, currently, action to enforce directors' duties is rare in all Member States.

Question 11. Are you aware of cases where certain stakeholders or groups (such as shareholders representing a certain percentage of voting rights, employees, civil society organisations or others) acted to enforce the directors' duty of care on behalf of the company? How many cases? In which Member States? Which stakeholders? What was the outcome?

Please describe examples:

One concrete example in Germany is the Aviva Investors initiative on enforcement rights of minority rights of shareholders incorporate in German Stock Corporation Act (appointment of a representative of Shareholders to investigate certain transactions of the companies).

We would also like to highlight that German law provides for statutory employee co-determination on the supervisory board level of stock corporations and limited liability companies. In case of more than 500 employees, the participation of the employees is one third of the board seats, in case of more than 2000 employees, there is equal participation of shareholder and employee representatives. At first glance, it is obvious that the interests of the employees, as one of the important stakeholders, can be achieved in this way. The social component of ESG is thus very well represented. However, employee participation offers further advantages: The employees know the business operations of their company and the quality of internal processes in detail very well and can therefore bring in additional knowledge, skills and experience into the work of the supervisory board. Employees often do have a certain sensitivity in case of negative developments and can also bring such issues to the supervisory board.

Question 12. What was the effect of such enforcement rights/actions? Did it give rise to case law/ was it followed by other cases? If not, why?

Please describe:

Please see our answer to Q11.

Question 13. Do you consider that stakeholders, such as for example employees, the environment or people affected by the operations of the company as represented by civil society organisations should be given a role in the enforcement of directors' duty of care?

- I strongly agree

- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please explain your answer:

Supervision and enforcement are tasks of the state for good reason. In case of misconduct, the competent authorities should investigate and pursue. In addition, individuals, whose rights are directly violated by a given company, are already now entitled to bring an action before a competent court. We thus strongly disagree to grant the above-mentioned groups a role in the enforcement of duty of care. It would breach with the basic legal principles mentioned above.

We would like to point out that in some countries it is already regulated by law that employees are given a role in the enforcement of director's duty of care. Depending on the size and legal status of the company, it is regulated in Germany, for example, that employee representatives must be appointed to the supervisory board. For example, in the case of stock corporations with more than 2,000 employees, half of the supervisory board must consist of shareholder representatives and half of employee representatives. The supervisory board has a control function, but also an advisory and support role vis-à-vis the directors. This model has proven successful and enables the company to represent its interests vis-à-vis the management board. This model could serve as a model for an EU-wide standard or should be applied in the existing guidelines.

Question 13a: In case you consider that stakeholders should be involved in the enforcement of the duty of care, please explain which stakeholders should play a role in your view and how.

Please see our answer to Q13.

Section III: Due diligence duty

For the purposes of this consultation, "due diligence duty" refers to a legal requirement for companies to establish and implement adequate processes with a view to prevent, mitigate and account for human rights (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's supply chain. "Supply chain" is understood within the broad definition of a company's "business relationships" and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

Question 14: Please explain whether you agree with this definition and provide reasons for your answer.

We generally agree with the definition. We welcome and would like to emphasize that the due diligence duties are to be interpreted inherently risk-based, proportionate and context-specific.

Question 15: Please indicate your preference as regards the content of such possible corporate due diligence duty (tick the box, only one answer possible). Please note that all approaches are meant to rely on existing due diligence standards, such as the OECD guidance on due diligence or the UNGPs. Please note that Option 1, 2 and 3 are horizontal i. e. cross-sectorial and cross thematic, covering human rights, social and environmental matters. They are mutually exclusive. Option 4 and 5 are not horizontal, but theme or sector-specific approaches. Such theme specific or sectorial approaches can be combined with a horizontal approach (see question 15a). If you are in favour of a combination of a horizontal approach with a theme or sector specific approach, you are requested to choose one horizontal approach (Option 1, 2 or 3) in this question.

- Option 1. “Principles-based approach”: A general due diligence duty based on key process requirements (such as for example identification and assessment of risks, evaluation of the operations and of the supply chain, risk and impact mitigation actions, alert mechanism, evaluation of the effectiveness of measures, grievance mechanism, etc.) should be defined at EU level regarding identification, prevention and mitigation of relevant human rights, social and environmental risks and negative impact. These should be applicable across all sectors. This could be complemented by EU-level general or sector specific guidance or rules, where necessary
- Option 2. “Minimum process and definitions approach”: The EU should define a minimum set of requirements with regard to the necessary processes (see in option 1) which should be applicable across all sectors. Furthermore, this approach would provide harmonised definitions for example as regards the coverage of adverse impacts that should be the subject of the due diligence obligation and could rely on EU and international human rights conventions, including ILO labour conventions, or other conventions, where relevant. Minimum requirements could be complemented by sector specific guidance or further rules, where necessary.
- Option 3. “Minimum process and definitions approach as presented in Option 2 complemented with further requirements in particular for environmental issues”. This approach would largely encompass what is included in option 2 but would complement it as regards, in particular, environmental issues. It could require alignment with the goals of

international treaties and conventions based on the agreement of scientific communities, where relevant and where they exist, on certain key environmental sustainability matters, such as for example the 2050 climate neutrality objective, or the net zero biodiversity loss objective and could reflect also EU goals. Further guidance and sector specific rules could complement the due diligence duty, where necessary.

- Option 4 "Sector-specific approach": The EU should continue focusing on adopting due diligence requirements for key sectors only.
- Option 5 "Thematic approach": The EU should focus on certain key themes only, such as for example slavery or child labour.
- None of the above, please specify

Question 15a: If you have chosen option 1, 2 or 3 in Question 15 and you are in favour of combining a horizontal approach with a theme or sector specific approach, please explain which horizontal approach should be combined with regulation of which theme or sector?

N/A

Question 15b: Please provide explanations as regards your preferred option, including whether it would bring the necessary legal certainty and whether complementary guidance would also be necessary.

DBG believes that the content of the due diligence duty should be flexible and eliminate complexity for issuers. We believe that a 'principle based' approach, coupled with 'comply or explain' provisions, would allow companies to meet EU level guidance whilst respecting local ESG codes and corporate standards.

Furthermore, we believe that a 'principles-based' approach should be coupled with a 'sector-specific' approach which would allow companies to apply relevant principles based on their specific activities. Whilst a 'principles-based' approach would allow companies to meet EU level guidance, while respecting local ESG codes and corporate standards, it would be further strengthened if the EU made it more sector-specific and accessible for companies. A sector-specific approach should focus on the riskiest sectors such as the chemical and building industry, plastic production, agriculture, transport etc. The due diligence duty should only cover measurable issues which can be verified and supported by tangible evidence. Focusing on measurable tangible issues would dispose of the uncertainty otherwise imposed on directors.

The EU should focus on cooperating with the OECD in establishing the OECD Guidance on due diligence as EU guidance. The EU should be engaged in the process if/when the OECD guidance is developed and/or amended. This way, one international standard can be maintained which is more helpful than establishing parallel standards, especially for companies operating in a multinational context. Substantial requirements should be aligned on an international basis leading to clarity and comparability which is important for the financial markets.

A comprehensive impact assessment should be developed before setting forth any possible legislation. Any

potential requirements should align with the Taxonomy Regulation as well as the upcoming review of the NFRD. The Platform for Sustainable Finance should play a pivotal role in this exercise.

Question 15c: If you ticked options 2) or 3) in Question 15 please indicate which areas should be covered in a possible due diligence requirement (tick the box, multiple choice)

- Human rights, including fundamental labour rights and working conditions (such as occupational health and safety, decent wages and working hours)
- Interests of local communities, indigenous peoples' rights, and rights of vulnerable groups
- Climate change mitigation
- Natural capital, including biodiversity loss; land degradation; ecosystems degradation, air, soil and water pollution (including through disposal of chemicals); efficient use of resources and raw materials; hazardous substances and waste
- Other, please specify

Question 15d: If you ticked option 2) in Question 15 and with a view to creating legal certainty, clarity and ensuring a level playing field, what definitions regarding adverse impacts should be set at EU level?

N/A

Question 15e: If you ticked option 3) in Question 15, and with a view to creating legal certainty, clarity and ensuring a level playing field, what substantial requirements regarding human rights, social and environmental performance (e.g. prohibited conducts, requirement of achieving a certain performance/target by a certain date for specific environmental issues, where relevant, etc.) should be set at EU level with respect to the issues mentioned in 15c?

N/A

Question 15f: If you ticked option 4) in question 15, which sectors do you think the EU should focus on?

N/A

Question 15g: If you ticked option 5) in question 15, which themes do you think the EU should focus on?

Question 16: How could companies'- in particular smaller ones'- burden be reduced with respect to due diligence? Please indicate the most effective options (tick the box, multiple choice possible)

This question is being asked in addition to question 48 of the Consultation on the Renewed Sustainable Finance Strategy, the answers to which the Commission is currently analysing.

- All SMEs[[16](#)] should be excluded
- SMEs should be excluded with some exceptions (e.g. most risky sectors or other)
- Micro and small sized enterprises (less than 50 people employed) should be excluded
- Micro-enterprises (less than 10 people employed) should be excluded
- SMEs should be subject to lighter requirements ("principles-based" or "minimum process and definitions" approaches as indicated in Question 15)
- SMEs should have lighter reporting requirements
- Capacity building support, including funding
- Detailed non-binding guidelines catering for the needs of SMEs in particular
- Toolbox/dedicated national helpdesk for companies to translate due diligence criteria into business practices
- Other option, please specify
- None of these options should be pursued

Please explain your choice, if necessary

We observe that SMEs want to be on board. They should be provided with opportunities to explain their business without being subject to disclosure obligations which add excessive costs and administrative burdens. We believe that OECD's non-binding guidance is a good start, which can be applied by SMEs. If a lighter and more relevant version could be developed for SMEs, this could be helpful.

As regards the scope of application of the guidance, we underline that this should apply to all companies irrespective of the type of funding they have opted for (i.e. to both listed and non-listed companies). The benefits of due diligence duties are not linked exclusively to listed companies, on the contrary, all companies should make efforts.

In addition, we would emphasize that companies are of very varying sizes, from the largest blue chips to SMEs. On the public markets, the vast majority of listed companies across Europe are in fact SMEs. This is

true not only for the smaller growth markets, but also for the main regulated markets. For this reason, due diligence duties should be developed in a way that allows as many companies as possible to comply, even if they may be very different in terms of e.g. size, type of business, business model and organisation.

Question 17: In your view, should the due diligence rules apply also to certain third-country companies which are not established in the EU but carry out (certain) activities in the EU?

- Yes
- No
- I do not know

Question 17a: What link should be required to make these companies subject to those obligations and how (e.g. what activities should be in the EU, could it be linked to certain turnover generated in the EU, other)? Please specify.

Whilst we do not support the introduction of any legal obligations in respect of due diligence, we believe that third country companies should be subject to the same obligations as similar EU companies, when they are operating in the EU.

Global application of guidance would support competitiveness and a level playing field among companies with multinational business activities. A mix of thresholds or criteria could be set up, based on activities, turnover generated in the EU, etc.

Question 17b: Please also explain what kind of obligations could be imposed on these companies and how they would be enforced.

Please see our answer to Q17a. Third country companies should be subject to the same obligations as similar EU companies.

Question 18: Should the EU due diligence duty be accompanied by other measures to foster more level playing field between EU and third country companies?

- Yes
- No
- I do not know

Please explain:

DBG would like to reiterate that building on the OECD work already developed is the best way forward, not only for material aspects of the guidance but also to achieve as much global harmonisation as possible. The EU should engage closely with the OECD as regards due diligence in supply chains.

Furthermore, we welcome the European Commission's increased focus on climate diplomacy and including ESG standards in their international engagements as it will strengthen the competitiveness of European companies.

Question 19: Enforcement of the due diligence duty

Question 19a: If a mandatory due diligence duty is to be introduced, it should be accompanied by an enforcement mechanism to make it effective. In your view, which of the following mechanisms would be the most appropriate one(s) to enforce the possible obligation (tick the box, multiple choice)?

- Judicial enforcement with liability and compensation in case of harm caused by not fulfilling the due diligence obligations
- Supervision by competent national authorities based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (such as for example fines)
- Supervision by competent national authorities (option 2) with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU
- Other, please specify

Please provide explanation:

In our view, there should be guidance and not mandatory requirements. We believe the best way forward would be to combine due diligence guidance with disclosure rules, i.e. comply or explain. This combination allows companies to apply the guidance deemed most appropriate for their company, while at the same time providing transparency for other stakeholders, such as investors, customers, sub-contractors or other partners. This way, stakeholders may take informed decisions on if/how to engage with each company, while taking into account how a company handles supply chain due diligence.

Should a mandatory due diligence duty nevertheless be introduced, we consider that this should be supervised by competent national authorities with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU.

Question 19b: In case you have experience with cases or Court proceedings in which the liability of a European company was at stake with respect to human rights or environmental harm caused by its subsidiary or supply chain partner located in a third country, did you encounter or do you have information about difficulties to get access to remedy that have arisen?

- Yes
- No

In case you answered yes, please indicate what type of difficulties you have encountered or have information about:

N/A

If you encountered difficulties, how and in which context do you consider they could (should) be addressed?

N/A

Section IV: Other elements of sustainable corporate governance

Question 20: Stakeholder engagement

Better involvement of stakeholders (such as for example employees, civil society organisations representing the interests of the environment, affected people or communities) in defining how stakeholder interests and sustainability are included into the corporate strategy and in the implementation of the company's due diligence processes could contribute to boards and companies fulfilling these duties more effectively.

Question 20a: Do you believe that the EU should require directors to establish and apply mechanisms or, where they already exist for employees for example, use existing information and consultation channels for engaging with stakeholders in this area?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Please explain.

While we agree that stakeholder involvement and establishing consultation channels for shareholders and employees may certainly contribute to better management of a company, we do not believe the EU should add legal requirements. Where this is not already in place, developing recommendations in soft law, such as corporate governance codes, would possibly be a useful way forward. We observe that many companies already have established active dialogues with a wide range of types of stakeholders depending on the type of business each company operates.

Further, we reiterate points made under Q11 about employee board representation, which may be used as a best practice and implemented in countries where this is not already standard. Minority shareholder rights is also an appropriate and useful principle to build on where this may be lacking. Employee shareholder

schemes are also a useful way of engaging employees.

There is a wide range of stakeholders which could be relevant in different ways for different companies, depending on the type of business the company operates. Detailing a list of stakeholders seems less helpful and principles-based recommendations should instead be favoured.

Question 20b: If you agree, which stakeholders should be represented? Please explain.

N/A

Question 20c: What are best practices for such mechanisms today? Which mechanisms should in your view be promoted at EU level? (tick the box, multiple choice)

	Is best practice	Should be promoted at EU level
Advisory body	<input type="radio"/>	<input type="radio"/>
Stakeholder general meeting	<input checked="" type="radio"/>	<input type="radio"/>
Complaint mechanism as part of due diligence	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input checked="" type="radio"/>	<input type="radio"/>

Other, please specify:

- Employee board representation.
- Minority shareholders rights.
- Further measures to facilitate becoming shareholders as well as to exercise shareholder rights, not least by digital solutions.
- Transparency requirements that facilitate for stakeholders to take informed decisions on if/how to engage with a company.
- Many companies are already, depending on the type of business, required to have a complaint function. Whistle-blowing mechanisms can also be useful.

Question 21: Remuneration of directors

Current executive remuneration schemes, in particular share-based remuneration and variable performance criteria, promote focus on short-term financial value maximisation [17] (Study on directors' duties and sustainable corporate governance).

Please rank the following options in terms of their effectiveness to contribute to countering remuneration incentivising short-term focus in your view.

This question is being asked in addition to questions 40 and 41 of the Consultation on the Renewed Sustainable Finance Strategy the answers to which the Commission is currently analysing.

Ranking 1-7 (1: least efficient, 7: most efficient)

Restricting executive directors' ability to sell the shares they receive as pay for a certain period (e.g. requiring shares to be held for a certain period after they were granted, after a share buy-back by the company)	
Regulating the maximum percentage of share-based remuneration in the total remuneration of directors	
Regulating or limiting possible types of variable remuneration of directors (e.g. only shares but not share options)	
Making compulsory the inclusion of sustainability metrics linked, for example, to the company's sustainability targets or performance in the variable remuneration	
Mandatory proportion of variable remuneration linked to non-financial performance criteria	
Requirement to include carbon emission reductions, where applicable, in the lists of sustainability factors affecting directors' variable remuneration	
	

Taking into account workforce remuneration and related policies when setting director remuneration	
Other option, please specify	
None of these options should be pursued, please explain	

Please explain:

First, as stated previously, we would like to question making references to “short-termism” without actually having a common understanding what defines “short-termism” in the first place. Second, intervening in the framework of a company’s decision to remunerate its directors based on ESG factors may adversely impact the relationship between the company, its investors and directors.

DBG favours including recommendations on remuneration of directors in soft law, such as corporate governance codes. Some codes already include for instance a holding period for shares which have been given as remuneration. We believe such principles-based recommendations in combination with transparency provides the best incentives in achieving a balanced remuneration policy. It allows companies to use different benefits and incentive models depending on what may be most appropriate for each company and, for instance, take into account which stage of growth the company is in as well as the competitive situation. Besides, we would also like to highlight requirements within the Shareholders Rights Directive which serves to increase transparency and shareholders’ possibilities to influence a company’s remuneration policy.

We note that if too many restrictions regarding directors’ remuneration are placed on listed companies, there may be an increased reluctance to use the public markets for financing. Further restrictions in this regard would risk conflicting with the policy objectives of the Capital Markets Union project, namely to strengthen European capital markets.

Finally, we would like to take the opportunity to encourage sharing of best practices as regards employee share schemes.

Question 22: Enhancing sustainability expertise in the board

Current level of expertise of boards of directors does not fully support a shift towards sustainability, so action to enhance directors’ competence in this area

could be envisaged [18] (Study on directors' duties and sustainable corporate governance).

Please indicate which of these options are in your view effective to achieve this objective (tick the box, multiple choice).

- Requirement for companies to consider environmental, social and/or human rights expertise in the directors' nomination and selection process
- Requirement for companies to have a certain number/percentage of directors with relevant environmental, social and/or human rights expertise
- Requirement for companies to have at least one director with relevant environmental, social and/or human rights expertise
- Requirement for the board to regularly assess its level of expertise on environmental, social and/or human rights matters and take appropriate follow-up, including regular trainings
- Other option, please specify
- None of these are effective options

Please explain:

Additional rules should not be adopted in this space. It is the board's responsibility to support a shift towards sustainability based on their assessment of the company's business with respect to environmental, social and human rights matters, not through prescriptive rules in relation to its governance. Although we do see merit in board members being exposed to regular ESG trainings with external science experts and internal experts.

DBG also believes the expertise in the board should be appropriate to the risks the respective company is exposed to or might be exposed to in the longer run. Those risks might considerably vary across sectors but also within a sector.

Question 23: Share buybacks

Corporate pay-outs to shareholders (in the form of both dividends and share buybacks) compared to the company's net income have increased from 20 to 60 % in the last 30 years in listed companies as an indicator of corporate short-termism. This arguably reduces the company's resources to make longer-term investments including into new technologies, resilience, sustainable business models and supply chains[19]. (A share buyback means that the company buys back its own shares, either directly from the open market or by offering shareholders the option to sell their shares to the company at a fixed price, as a result of which the number of outstanding shares is reduced, making each share worth a greater percentage of

the company, thereby increasing both the price of the shares and the earnings per share.) EU law regulates the use of share-buybacks [Regulation 596/2014 on market abuse and Directive 77/91, second company law Directive].

In your view, should the EU take further action in this area?

- I strongly agree
- I agree to some extent
- I disagree to some extent
- I strongly disagree
- I do not know
- I do not take position

Question 23a: If you agree, what measure could be taken?

We strongly disagree with the EU taking further action in this area.

- (1) Management often opt for dividend payouts and share buy backs because they increase the attractiveness of a share and strengthens the market capitalisation of the company.
- (2) This increases the ability of a company to better finance new investments and/or innovation.
- (3) Possible regulatory action may create regulatory disincentives to invest in EU domiciled companies and reduce available investment funding that these companies need over the next years to cope with the digital and green transformation and to keep their workforce well-trained and employed. This could impact both retail investors investing into SMEs as well as institutional investors with a global investment universe.
- (4) In addition, private savers in Europe who tend to invest their savings in the European Single Market will suffer a disadvantage – either due to lower yields on their investments or higher transaction cost if they would want to invest outside Europe. This is not desirable for the European Union which has individual wealth creation on its political agenda.

Question 24: Do you consider that any other measure should be taken at EU level to foster more sustainable corporate governance?

If so, please specify:

In order to achieve more sustainable corporate governance within the European economy, it should be considered that companies take into account the potential responses of their shareholders when making decisions. Incentive systems for long-term shareholders, such as rewards through tax advantages or voting rights, will encourage companies to establish long-term sustainability objectives without being concerned that their shareholders will reallocate their capital. Appropriate incentive systems, that reward corporations when implementing sustainable governance structures, should be considered when designing legal frameworks.

Section V: Impacts of possible measures

Question 25: Impact of the spelling out of the content of directors' duty of care and of the due diligence duty
on the company

Please estimate the impacts of a possible spelling out of the content of directors' duty of care as well as a due diligence duty compared to the current situation. In your understanding and own assessment, to what extent will the impacts/effects increase on a scale from 0-10? In addition, please quantify/estimate in quantitative terms (ideally as percentage of annual revenues) the increase of costs and benefits, if possible, in particular if your company already complies with such possible requirements.

Table

	Non-binding guidance. Rating 0-10	Introduction of these duties in binding law, cost and benefits linked to setting up /improving external impacts' identification and mitigation processes Rating 0 (lowest impact)-10 (highest impact) and quantitative data	Introduction of these duties in binding law, annual cost linked to the fulfilment of possible requirements aligned with science based targets (such as for example climate neutrality by 2050, net zero biodiversity loss, etc.) and possible reorganisation of supply chains Rating 0 (lowest impact)-10 (highest impact) and quantitative data
Administrative costs including costs related to new staff required to deal with new obligations			
Litigation costs			
Other costs including potential indirect costs linked to higher prices in the supply chain, costs liked to drawbacks as explained in question 3, other than administrative and litigation costs, etc. Please specify.			
Better performance stemming from increased employee loyalty, better employee performance, resource efficiency			

Competitiveness advantages stemming from new customers, customer loyalty, sustainable technologies or other opportunities			
Better risk management and resilience			
Innovation and improved productivity			
Better environmental and social performance and more reliable reporting attracting investors			
Other impact, please specify			

Please explain:

N/A

Question 26: Estimation of impacts on stakeholders and the environment

A clarified duty of care and the due diligence duty would be expected to have positive impacts on stakeholders and the environment, including in the supply chain. According to your own understanding and assessment, if your company complies with such requirements or conducts due diligence already, please quantify / estimate in quantitative terms the positive or negative impact annually since the introduction of the policy, by using examples such as:

- Improvements on health and safety of workers in the supply chain, such as reduction of the number of accidents at work, other improvement on working conditions, better wages, eradicating child labour, etc.
- Benefits for the environment through more efficient use of resources, recycling of waste, reduction in greenhouse gas emissions, reduced pollution, reduction in the use of hazardous material, etc.
- Improvements in the respect of human rights, including those of local communities along the supply chain
- Positive/negative impact on consumers
- Positive/negative impact on trade
- Positive/negative impact on the economy (EU/third country).

N/A

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